STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, Charging Party, v. COUNTY OF RIVERSIDE, Respondent.	Case No. LA-CE-5-M PERB Decision No. 1577-M December 31, 2003

Appearances: Tosdal, Levine, Smith, Steiner & Wax by Jon Y. Vanderpool, Attorney, for Service Employees International Union; Liebert, Cassidy & Whitmore by Nate Kowalski, Attorney, for County of Riverside.

Before Baker, Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by the County of Riverside (County) to an administrative law judge's (ALJ) proposed decision (attached). The charge alleged that the County violated the Meyers-Milias-Brown Act (MMBA)[1] by refusing to process a grievance of a unit member. The Service Employees International Union (SEIU) alleged that this conduct constituted a violation of MMBA section 3505 and PERB Regulation 32603(b), (c) and (g)[2].

Using an expedited decision process, as stipulated by the parties, the ALJ found that

[1]MMBA is codified at Government Code section 3500 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

[2]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

the County unilaterally changed the grievance process regarding the grievability of promotions without first providing SEIU with notice and an opportunity to bargain. The County filed exceptions to the ALJ's proposed decision and SEIU filed a response to the County's exceptions.

Upon review of the record in this matter, the Board affirms the ALJ's proposed decision consistent with the discussion herein and shall address the issues raised by the County in its exceptions.

BACKGROUND

The charge alleges that on June 8, 2001, unit member Carmela B. MacArthur (MacArthur) grieved the County's alleged improper promotion of a per diem employee over MacArthur, a full-time employee and that MacArthur did not receive adequate training for the position. The grievance alleges that the County violated memorandum of understanding (MOU) Art. VI, Section 5. In the charge, SEIU relied upon attached descriptions for the Radiologic Technician classifications, emphasizing language that the series was designed "to establish a career ladder, which provides professional growth through performance of increasingly responsible and complex assignments and to recognize professional development and expertise attained through education and experience." On June 21, 2001, the County responded that it was refusing to process the grievance because the issue of promotion was not grievable. According to SEIU, MOU Art. VI, Section 5 requires that promotions be made on the basis of "merit and ability." Art. XIII of the MOU sets forth the grievance procedure. Under Art. XIII, Section 2, a grievance is defined as "the subject of a written request or complaint . . . arising out of a dispute by an employee or group of employees concerning the application or interpretation of the specific terms and conditions set forth in this Memorandum of Understanding." According to SEIU, the issue of promotions is not excluded from the

grievance procedure. SEIU alleges that the County's conduct represents a unilateral change in policy without prior notice to SEIU and that this conduct also repudiates the negotiated MOU. SEIU also alleges that the County's conduct interferes with members' rights to representation and SEIU's rights to represent its members.

The County argues that matters subject to the grievance procedure are not all-encompassing and that the grievance procedure excludes matters reviewable through another administrative procedure, actions requiring formal adoption of a rule or regulation by the County Board of Supervisors, and listed disciplinary actions. (MOU Article XIII, Sections 2(A), 2(B) and 2(C), respectively.) The County argues that the promotion provision in the MOU must be read in context, that the parties have agreed to a merit system procedure; and under that provision, the County has the sole discretion to determine who to promote. Article VI, Section 5 provides:

> Merit Systems/Veterans Preference. The Human Resources Administration under this Memorandum is designated a merit system. Appointments, promotions, demotions, transfers and dismissals shall be made on the basis of merit and ability. Each officer shall appoint all necessary employees allowed for their department by this Memorandum only from among persons certified to them by the Human Resources Director as eligible for the respective positions. The Human Resources Director shall determine the methods of evaluating the qualifications of applicants. The methods shall be practical in nature and may involve any combination of written test, oral test, performance test, rating of education, training and experience and shall take into consideration a system of veterans preference as may be adopted by the Board of Supervisors, by resolution. The veterans preference program shall be administered by the Human Resources Director.

The County also referred to a 1995 arbitration award involving a grievance by another employee organization that challenged the implementation of the promotional process by the County allegedly in violation of an identical MOU provision.[3]

ALJ'S PROPOSED DECISION

The proposed decision was issued pursuant to an expedited hearing process, as stipulated by the parties, in which the record comprised the contents of the case file, including statements of the parties' positions and attachments to those statements.

Using a "per se" test, the ALJ found that promotions are matters within the scope of representation and that the County unilaterally changed the grievance process as it pertained to the issue of promotions without affording SEIU notice or the opportunity to bargain. The ALJ further disagreed with the County's contention that its action did not constitute a change in policy because it only affected one employee. Relying upon Hacienda La Puente Unified School District (1997) PERB Decision No. 1186 (Hacienda La Puente) and Moreno Valley Unified School District (1995) PERB Decision No. 1106 (Moreno Valley), the ALJ held that the County's statement that "the issue of promotion is not grievable," was sufficiently broad to comprise not merely a rejection of a single grievance, but also a change in the County's grievance policy. The ALJ also noted that the County had previously agreed to process a grievance through arbitration over a similar MOU provision in 1994-1995.

The ALJ further disagreed with the County's interpretation of MOU exclusions from the grievance process. Article XII, Section 2(C) excludes complaints involving forms of disciplinary action; promotions do not fall within these exclusions. Article VI, Section 5 provides the County with discretion to evaluate and select candidates for promotion, but

[3]While he denied the grievance, the arbitrator did not find that the MOU excluded the issue from the grievance procedure.

requires the County to promote on the basis of "merit and ability" and to follow specified guidelines. Accordingly, the ALJ concluded that the County's conduct violated MMBA section 3505 and PERB Regulation 32603(c) and further found derivative violations of MMBA sections 3506 and 3503, and PERB Regulation 32603(a) and (b).

DISCUSSION

In determining whether a party has violated MMBA section 3505 and PERB Regulation 32603(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.)[4] Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations; and, (3) the change is not merely an isolated breach of the contract, but amounts to a change of policy, i.e., the change has a generalized effect or continuing impact on bargaining unit members' terms and conditions of employment. (Vernon Fire Fighters v. City of Vernon (1980) 107 Cal.App.3d 802 [165 Cal.Rptr. 908]; Walnut Valley Unified School District (1981) PERB Decision No. 160; San Joaquin County Employees Assn. v. City of Stockton (1984) 161 Cal.App.3d 813 [207 Cal.Rptr. 876]; Grant Joint Union High School District (1982) PERB Decision No. 196.)

Under the per se test, the Board finds that the County's refusal to process MacArthur's grievance comprised an unlawful unilateral change without notice to SEIU or opportunity to

[4]When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [16 Cal.Rptr. 507].)

bargain. The Board has long held that grievance procedures are within the scope of representation. (Anaheim City School District (1983) PERB Decision No. 364;[5] MMBA sections 3500(a) and 3503.) The Board disagrees with the County that its refusal to process MacArthur's grievance did not have a generalized effect or continuing impact on the unit. Under Hacienda La Puente and Moreno Valley, a grievance on behalf of one or a few individuals has a generalized effect or continuing impact on the unit members' terms and conditions of employment because the action is based upon the employer's belief that it had a contractual right to take the action without negotiating with the union. (Hacienda La Puente, at p. 4.) Here, in June 2001, the County clearly stated in writing to SEIU that promotions were not grievable under the MOU. However, in 1995, the County had agreed to process a grievance to arbitration over promotions under identical MOU provisions with a different bargaining unit. In its exceptions, the County contends that the statement set forth in its response to the grievance, that "the issue of promotion is not grievable," is not a "broad proclamation;" that contention is not credible.

The County has not identified specific exclusions in the grievance procedure for promotions. Instead, the County asserts that MOU Article VI, Section 5 covering promotions, confers to the County a unilateral right to determine who is promoted. The District points to language in the MOU establishing a merit system administered by the Human Resources Director. Article VI, Section 5 also requires that each officer appoint all necessary employees but only among individuals certified as eligible by the Human Resources Director. The Human Resources Director shall determine the methods of evaluating qualifications of

[5]See footnote 4. MMBA sections 3500(a) and 3503 confer to employee organizations the same rights to representation of unit members as Education Employment Relations Act sections 3540 and 3543.1(a).

candidates, using written tests, oral tests, performance tests or other listed methods. In essence, the County argues that SEIU has waived its right to grieve the issue of promotions generally.

Under long-standing Board precedent, such a waiver must be "clear and unmistakable." (San Marcos Unified School District (2003) PERB Decision No. 1508, pp. 27-30; Hacienda La Puente; Amador Valley Joint Union High School District (1978) PERB Decision No. 74; Oakland Unified School Dist. v. Public Employment Relations Bd. (1981) 120 Cal. App. 3d 1007, 1011 [175 Cal. Rptr. 105].) SEIU did not waive its right to file grievances regarding promotions. Under MOU Article VI, Section 5, the County's right to promote employees is circumscribed by the provision requiring that promotions be based upon "merit and ability." At least in part, this is what MacArthur was asserting in her grievance. Consequently, the Board finds that there is no exclusion in the grievance procedure for promotions generally. Whether or not MacArthur's grievance has merit should be addressed through the grievance process. It is the County's failure to process the grievance, not the merits of the grievance, that constitutes the unlawful conduct.

The County further counters that it has recently changed the MOU to provide for binding mediation for disputes over grievability of such issues as MacArthur's. The County reasons that it currently could not refuse to process MacArthur's grievance if filed now. As stated, the Board has found nothing in the MOU grievance procedure that excludes the issue of promotions. Similarly, the County argues that MOU Article XIII, Section 2(B) excludes issues requiring formal adoption of a rule or regulation by the County's Board of Supervisors. It explains that processing this grievance would require a revision in the MOU, and therefore a formal vote by the County's board. The Board disagrees. Besides the fact that the Board finds the issue of promotions is not excluded from the grievance procedure, our finding is supported

by the only evidence of past practice provided by the parties – the 1994-1995 grievance/arbitration of a similar issue involving identical MOU language.

Finally, the Board disagrees with the County's contention that the ALJ's proposed order was overbroad, requiring the County to process all grievances over promotions. What the order states, in part, is that the County must cease and desist from:

> Failing and refusing to process grievances regarding promotion, including the grievance filed by SEIU on behalf (of) Carmella Bea MacArthur on June 8, 2001, pursuant to the parties' agreed-upon grievance procedures.

The proposed order therefore does not require processing of all such grievances unless they are processed in compliance with the "parties' agreed-upon grievance procedures." Thus, contrary to its assertion, the County would not be required to process untimely grievances.

In light of the above discussion, the Board affirms the ALJ's findings that the County has unlawfully refused to process MacArthur's grievance in violation of MMBA section 3505 and PERB Regulation 32603(c), also resulting in derivative violations of MMBA sections 3506 and 3503, and PERB Regulation 32603(a) and (b).

ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in this case, it is found that the County of Riverside (County) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503, 3505 and 3506 and PERB Regulation 32603(a), (b) and (c) by unilaterally changing its grievance policy regarding the grievability of promotions without providing the Service Employees International Union (SEIU) with prior notice and the opportunity to bargain.

Pursuant to MMBA section 3509(a), it is hereby ORDERED that the County, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing to meet and confer in good faith with SEIU regarding a change in policy affecting matters within the scope of representation;

2. Unilaterally changing its grievance policy regarding the grievability of promotions, without giving SEIU prior notice and opportunity to bargain;

3. Failing and refusing to process grievances regarding promotions, including the grievance filed by SEIU on behalf of Carmella Bea MacArthur on June 8, 2001, pursuant to the parties' agreed-upon grievance procedures.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE MMBA:

1. Within ten (10) workdays after service of a final decision in this matter, process the grievance filed by SEIU on behalf of Carmella Bea MacArthur on June 8, 2001, and process all other grievances filed by SEIU regarding promotions, pursuant to the parties' agreed-upon grievance procedures;

2. Post copies of the Notice to Employees attached hereto as an Appendix, signed by an authorized agent of the County, at all work locations where notices to employees are customarily posted. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material;

3. Written notification of the actions taken to comply with this Order shall be made to the Sacramento Regional Director of the Public Employment Relations Board in accordance with the director's instructions. Continue to report, in writing, to the regional director thereafter as directed. All reports to the regional director shall be concurrently served on SEIU.

It is further ordered that the proposed decision in the unfair practice charge in Case No. LA-CE-5-M is hereby AFFIRMED.

Members Baker and Neima joined in this Decision.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. LA-CE-5-M, Service Employees International Union v. County of Riverside, in which all parties had the right to participate, it has been found that the County of Riverside violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503, 3505 and 3506 and PERB Regulation 32603(a), (b) and (c) by unilaterally changing its grievance policy regarding the grievability of promotions without providing the Service Employees International Union (SEIU) with prior notice and the opportunity to bargain.

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Failing to meet and confer in good faith with SEIU regarding a change in policy affecting matters within the scope of representation;

2. Unilaterally changing its grievance policy regarding the grievability of promotions, without giving SEIU prior notice and opportunity to bargain;

3. Failing and refusing to process grievances regarding promotions, including the grievance filed by SEIU on behalf of Carmella Bea MacArthur on June 8, 2001, pursuant to the parties' agreed-upon grievance procedures.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE MMBA:

1. Process the grievance filed by SEIU on behalf of Carmella Bea MacArthur on June 8, 2001, and process all other grievances filed by SEIU regarding promotions, pursuant to the parties' agreed-upon grievance procedures.

Dated: _____ COUNTY OF RIVERSIDE

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1997 Charging Party, v. COUNTY OF RIVERSIDE, Respondent.	UNFAIR PRACTICE CASE NO. LA-CE-5-M PROPOSED DECISION (8/21/02)

Appearances: Bob Lathrop, Executive Director, for Service Employees International Union, Local 1997; Liebert Cassidy Whitmore, by Nate Kowalski, Attorney, for County of Riverside.

Before , .

PROCEDURAL HISTORY

Service Employees International Union, Local 1997 (SEIU), representing a unit of employees employed by the County of Riverside (County), filed an unfair practice charge on August 1, 2001, alleging that the County unlawfully refused to process a grievance. On January 15, 2002, the Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint alleging that the County unilaterally refused to process the grievance without affording SEIU prior notice or opportunity to bargain, thereby repudiating the grievance/arbitration provisions of the parties' contract, in violation of sections 3503, 3505, and 3506 of the Meyers-Milias-Brown Act (MMBA)[1] and PERB Regulation 32603(a), (b), and (c).[2] In its answer to the complaint, the County denied any wrongdoing.

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[1] MMBA is codified at Government Code section 3500 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

[2] PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation 32603 reads in part:

An informal settlement conference held on February 27, 2002 failed to resolve the matter. A formal hearing was scheduled for June 26, 2002, in Riverside. However, prior to the opening of the hearing, and in lieu of a hearing, the parties stipulated that the record would consist of the contents of the case file, which contains statements of the parties' positions as well as documents attached thereto.

After the filing of briefs, the matter was submitted for decision on August 8, 2002.

FINDINGS OF FACT

It is undisputed that the County is a public agency within the meaning of MMBA section 3501(a), and CSEA is a recognized employee organization within the meaning of section 3501(b). Based on the parties' stipulations, I find the following facts:

At all relevant times, there has been in effect a memorandum of understanding (MOU) between the parties. Article VI, section 5, entitled Merit Systems/Veterans Preference, reads in part:

> It shall be an unfair practice for a public agency to do any of the following:
>
> (a) Interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of rights guaranteed by Government Code section 3502 or by any local rule adopted pursuant to Government Code section 3507.
>
> (b) Deny to employee organizations rights guaranteed to them by Government Code section 3503, 3504.5, 3505.l, 3505.3, 3508(c) or 3508.5 or by any local rule adopted pursuant to Government Code section 3507.
>
> (c) Refuse or fail to meet and confer in good faith with an exclusive representative as required by Government Code section 3505 or any local rule adopted pursuant to Government Code section 3507.

> The Human Resource Administration under this Memorandum is designated a merit system. Appointments, promotions, demotions, transfers and dismissals shall be made on the basis of merit and ability. Each officer shall appoint all necessary employees allowed for their department by this Memorandum only from among persons certified to them by the Human Resources Director as eligible for the respective positions. The Human Resources Director shall determine the methods of evaluating the qualifications of applicants. The methods shall be practical in nature and may involve any combination of written test, oral test, performance test, rating of education, training and experience.

Article XIII, entitled Grievance Procedure, reads in part:

> Section 2. Grievance Definition. A "grievance" is the subject of a written request or complaint, which has not been settled as a result of the discussion required by Section 1, initiated by an employee, arising out of a dispute by an employee or group of employees concerning the application or interpretation of the specific terms and conditions set forth in this Memorandum of Understanding, Ordinance, rule, regulation, or policy concerning wages, hours, and other terms and conditions of employment. All other matters are excluded from the grievance procedure including, but not limited to:
>
> A. Matters reviewable under some other County administrative procedure…
>
> B. Requests or complaints, the solution of which would require the exercise of legislative power, such as the adoption of . . . [a] policy established by the Board of Supervisors.
>
> C. Requests or complaints involving…the termination, suspension, demotion or written reprimand of a regular employee reviewable pursuant to other provisions of this Memorandum or reviewable under the State Approved Local Merit System.

On June 8, 2001, SEIU, on behalf of unit employee Carmella Bea MacArthur (MacArthur), filed a grievance alleging the County's violation of Article VI, section 5 of the MOU. The grievance complained that the County awarded a full-time Radiology Specialist position to a per diem employee instead of to MacArthur, a full-time employee, and that

MacArthur was not given adequate training for the position. By letter of June 21, 2001, the County responded as follows:

> We are unable to process the above-referenced Grievance Petition because the issue of promotion is not grievable.

In support of its charge, SEIU provided the job description and qualifications for the various Radiologic Technician classifications, placing particular emphasis on the following language:

> Class Characteristics
> The objective of this series is to establish a career ladder which provides professional growth through the performance of increasingly responsible and complex assignments and to recognize professional development and expertise attained through education and experience. (Emphasis added.)

For its part, the County relies on Article VI, section 5 which states, inter alia, "[T]he Human Resources Director shall determine the methods of evaluating the qualifications of applicants." The County contends this language shows the parties' agreement that evaluation of candidates for promotion is solely a management function, and that all the requirements of the MOU and the Merit System procedure were followed in making the promotion at issue. The County also contends that because the Board of Supervisors adopted the MOU, the County's discretion regarding promotions cannot be changed without the re-adoption of the MOU, thus such discretion is excluded from the grievance procedure by Article XIII, section 2(B) of the MOU.

In support of its position, the County submitted as an exhibit a 1995 arbitration award based on a promotion grievance brought in 1994 by another union alleging the County's violation of a merit system provision, virtually identical to the instant one, contained in its MOU with that union. The arbitrator denied the grievance on the basis that there was no

evidence of irregularity regarding the list of candidates from which the County made its selection. There is no evidence of a bargaining history between the County and SEIU regarding promotion grievances.

ISSUE

Did the County unilaterally change its policy regarding grievances in violation of the MMBA and PERB regulations?

CONCLUSIONS OF LAW

In determining whether a party has promulgated or implemented an unlawful unilateral change in employees' terms and conditions of employment, PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Vernon Fire Fighters v. City of Vernon (1980) 107 Cal.App.3d 802 [165 Cal. Rptr. 908]; Walnut Valley Unified School District (1981) PERB Decision No. 160; San Joaquin Co. Employees Assn. v. City of Stockton (1984) 161 Cal.App.3d 813 [207 Cal.Rptr. 876]; Grant Joint Union High School District (1982) PERB Decision No. 196 (Grant).)

Applying these criteria, PERB has consistently held that promotions are matters within the scope of representation. (E.g., Healdsburg Union High School District (1984) PERB Decision No. 375; San Mateo School District (1984) PERB Decision No. 375 [both cases interpreting the Educational Employment Relations Act].) The California Supreme Court has taken the same position. In Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [116

Cal.Rptr. 507], the court, relying on National Labor Relations Board cases as precedent, held that promotions affect unit employees' opportunities for advancement and therefore relate to the "terms and conditions of employment" over which the employer was required to bargain under the MMBA.[3] And in Pacific Legal Foundation v. Brown (1981) 29 Cal.3d 168 [172 Cal.Rptr. 487], the court held that there is no constitutional conflict between the collective-bargaining process required by the State Employer-Employee Relations Act[4] and the state's merit system for hiring and promotion.

In the instant case, it is undisputed that the County acted without affording SEIU prior notice or opportunity to bargain. However, the County argues that it did not change any "policy," as its conduct affects only the MacArthur grievance. In Grant, the Board held that a change in the terms of a collective bargaining agreement which has "a generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members," is not merely a contractual breach, but is a change in policy. Thus, the employer's change in one employee's shift, in reliance on the contractual management rights clause, was held to be an unlawful change in policy. (Hacienda LaPuente Unified School District (1997) PERB Decision No. 1186. See also Moreno Valley Unified School District (1995) PERB Decision No. 1106 [changes in two employees' shifts].) Here, the County, at least in 1994 with regard to a similar MOU, recognized the grievability of promotion complaints, as evidenced by the 1995 arbitration decision described above. However, in its June 21, 2001, letter to SEIU, the County took a different position, stating that "the issue of promotion is not grievable." I find

[3] MMBA section 3504 provides that the scope of representation "shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment . . . ."

[4] Now known as the Ralph C. Dills Act.

this language sufficiently broad as to constitute not merely its rejection of a single grievance, but a change in its grievance policy, one which is likely to have a generalized effect and continuing impact on unit members' opportunities for advancement, especially those in the Radiology series who have a contractual right to a "career ladder." (Firefighters Union v. City of Vallejo, supra, 12 Cal.3d 608.)

Contrary to the County's contentions, I find nothing in the MOU to privilege such a change in policy. Article XII, Grievance Procedure, section 2C, excludes complaints involving termination, suspension, demotion or written reprimand reviewable under the state-approved local merit system procedure, but there is nothing which excludes complaints regarding promotions.[5] Further, while Article VI, section 5, Merit System, gives the County discretion to evaluate and select candidates for promotion, it also requires the County to promote on the basis of "merit and ability" and to follow the stated procedural guidelines.[6] In the instant case, the MacArthur grievance would allow SEIU to complain that the County abused its discretion, and there is no language in the MOU which insulates the County against such a claim.

Accordingly, I find the County's conduct to constitute a refusal to meet and confer in good faith with SEIU in violation of MMBA section 3505 and PERB Regulation 32603(c). I also find that by its conduct the County has interfered with the rights of unit employees to be

[5] As to the County's argument regarding exclusion from the grievance procedure because the Board of Supervisors adopted of the MOU, I find this argument convoluted. There is nothing in the unfair practice charge, or in the complaint, or in my decision, which suggests any change in the MOU, other than a return to the status quo. Thus, there would be no reason for any readoption of the MOU.

[6] In its post-hearing brief, the County relies on the proposed decision in PERB Case No. SA-CE-404, California School Employees Association and its Chico Chapter #110 v. Chico Unified School District (1982) 6 PERC 13063 (reversed by the Board on other grounds, Chico Unified School District (1983) PERB Decision No. 286). However, Chico is neither precedential nor is it on point, as it deals with the make-up of a promotion selection committee. Accordingly, I find it inapplicable to the instant case.

represented by SEIU in violation of MMBA section 3506 and PERB Regulation 32603(a), and has denied SEIU its right to represent bargaining unit employees in violation of MMB section 3503 and PERB Regulation 32603(b).

REMEDY

Pursuant to sections 3509(a) and 3541.3(i), PERB is given the power:

> To investigate unfair practice charges or alleged violations of this chapter, and take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

Here, the County violated the MMBA by unilaterally changing its grievance policy regarding the grievability of promotions without providing SEIU with prior notice and opportunity to bargain. By these actions, the County violated MMBA sections 3503, 3505, and 3506 and PERB Regulations 32603(a), (b), and (c).

The ordinary remedy in unilateral change cases is an order directing the respondent to cease and desist from continuing to promulgate or implement the unlawful change, and to rescind the change and return to the status quo. It is also the ordinary remedy that the respondent be ordered to post a notice incorporating the terms of the order. It effectuates the purposes of the MMBA that employees be informed by a notice, signed by an authorized agent, that the respondent has acted unlawfully, is being required to cease and desist from its unlawful activity and will comply with the order.

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is found that on or about June 21, 2001, the County of Riverside (County) violated the Meyers-Milias-Brown Act (MMBA or Act), Government Code sections 3503, 3505, and 3506, and California Code of Regulations, title 8, section 32603(a), (b), and (c), by

unilaterally changing its grievance policy regarding the grievability of promotions without providing Service Employees International Union, Local 1997 (SEIU) with prior notice and opportunity to bargain. Therefore, pursuant to Government Code sections 3509(a) and 3541.5(c), it is hereby ORDERED that the County, its governing board and its representatives, shall:

A. CEASE AND DESIST FROM:

1. Failing to meet and confer in good faith with SEIU regarding a change in policy affecting matters within the scope of representation;

2. Unilaterally changing its grievance policy regarding the grievability of promotions, without giving SEIU prior notice and opportunity to bargain;

3. Failing and refusing to process grievances regarding promotions, including the grievance filed by SEIU on behalf Carmella Bea MacArthur on June 8, 2001, pursuant to the parties' agreed-upon grievance procedures.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE MMBA:

1. Within ten (10) workdays after service of a final decision in this matter, process the grievance filed by SEIU on behalf of Carmella Bea MacArthur on June 8, 2001, and process all other grievances filed by SEIU regarding promotions, pursuant to the parties' agreed-upon grievance procedures.

2. Post copies of the Notice to Employees attached hereto as an Appendix, signed by an authorized agent of the County, at all work locations where notices to employees are customarily posted. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material;

3. Upon issuance of a final decision, make written notification of the actions taken to comply with the Order to the Sacramento Regional Director of the Public Employment Relations Board in accord with the director's instructions.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, sec. 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, secs. 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

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Ann L. Weinman
Administrative Law Judge